

**APPROVED DRAFT MINUTES
SUNNYVALE CITY COUNCIL,
REDEVELOPMENT AGENCY MEETING,
AND ONIZUKA LOCAL REDEVELOPMENT AUTHORITY MEETING
TUESDAY, SEPTEMBER 30, 2008**

Directly following this meeting a Redevelopment Agency Meeting was held. Directly following that meeting a Special Meeting (Closed Session) of the City Council was held. Directly following that meeting a Special Meeting (Study Session) of the Local Redevelopment Agency was held.

5 P.M. SPECIAL COUNCIL MEETING (Study Session) - Exploration of a Branch Library in Sunnyvale.

6 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Conference with Labor Negotiators pursuant to Government Code 54987.6. Negotiator: Erwin Young, Director of Human Resources Employee Organizations: Sunnyvale Employees Association (SEA), Service Employees International Union (SEIU) Local 715 (part-time employees).

7 P.M. COUNCIL MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Human Resources Erwin Young
Director of Public Works Marvin Rose
Transportation and Traffic Manager Jack Witthaus
Planning Officer Trudi Ryan
Intergovernmental Relations Officer Yvette Agredano
Director of Public Safety Don Johnson
City Clerk Gail Borkowski

SPECIAL ORDER OF THE DAY

National Breast Cancer Awareness Month

SPECIAL ORDER OF THE DAY

October is Arts and Humanities Month

CLOSED SESSION REPORTS

Vice Mayor Hamilton reported that the City Council met in Closed Session on September 16, 2008 regarding: Potential Threat to Public Services or Facilities: Consultation with Sunnyvale Department of Public Safety, Director of Public Safety, Deputy Chief of Patrol Services, Deputy Chief of Special Operations and Special Operations Captain, pursuant to Government Code Section 54957.

Vice Mayor Hamilton reported that no direction was given, and no action was taken.

Vice Mayor Hamilton reported that the City Council met in a second Closed Session on September 16, 2008 regarding: Closed Session pursuant to Government Code Section 54957 – Public Employee Appointment. Title: City Manager.

Vice Mayor Hamilton reported action was taken and further action will be taken this evening.

Vice Mayor Hamilton reported that the City Council met in Closed Session earlier this evening regarding: Conference with Labor Negotiators pursuant to Government Code 54987.6, Negotiator: Erwin Young, Director of Human Resources, Employee Organizations: Sunnyvale Employees Association (SEA), Service Employees International Union (SEIU) Local 715 (part-time employees).

Vice Mayor Hamilton reported direction was given, but no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Moylan announced that the City accepts applications for boards and commissions on a continuous basis. Councilmember Moylan announced the current openings on the City's boards and commissions.

Councilmember Moylan announced that the City is accepting applications for the Sunnyvale Community Events Grant program.

Vice Mayor Hamilton announced that the new Heritage Museum is now open.

Councilmember Moylan requested staff add information to the museum's Web site as to how members of the public may rent out the facility.

CONSENT CALENDAR

Councilmember Swegles pulled Item 1.F.

Councilmember Whittum pulled Item 1.A.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Items 1.A. and 1.F.

VOTE: 7-0

1.A. Approval Revised Draft Minutes of August 26, 2008

Councilmember Whittum stated he pulled the August 26, 2008 minutes because there are a couple of points of a discussion that he would like to have included within Item 4 of the minutes. Councilmember Whittum stated he would like to have the discussion, in which he verified that a home in the neighborhood existed with a higher floor area ratio (FAR), added to the second paragraph from the bottom of page 14 of the minutes.

Councilmember Whittum stated he would also like to have page 14 of the minutes reflect that he verified that the front view of the appellant's home was similar to the home across the street and on page 15, he would like his comments to reflect that he asked the appellant about the side view of their home in response to staff's comments about the side view mass. Councilmember Whittum stated he felt these points were relevant because when people look at this case, they may be interested to know the discussion. Councilmember Whittum stated he is not in favor of the minutes as they are currently.

Councilmember Moylan stated he does not have any disagreement with the minutes; however, he would like to request that the maker of the motion on the floor, consider his request to add a sentence to his comments on page 17 of the minutes. Councilmember Moylan explained that he will vote in favor of approving the minutes, regardless whether his request is approved or not. Councilmember Moylan requested that the minutes include his comment that the last time Council overruled a Planning Commission decision was when they approved the Best Buy/Pet Smart project. Councilmember Moylan stated he would like this comment added because that previous decision to go against the Planning Commission's decision had lingering effects.

Vice Mayor Hamilton stated she is not clear what Councilmember Whittum is including in the minutes. Councilmember Whittum stated he is suggesting the minutes return to staff for revisions based on his comments.

City Attorney David Kahn stated that Council could make a motion to amend the minutes in order to include Councilmember Whittum's comments. Councilmember Whittum stated that the question is not whether the comments occurred, rather it is the relevancy of his comments, and it is his opinion that his comments were very relevant. Councilmember Whittum explained further that he is not concerned how his comments will be worded, but that they are actually included, and that is why he is suggesting that the minutes go back to staff for revisions.

Public comments opened at 7:27 p.m.

No speakers.

Public comments closed at 7:27 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approved the Revised Draft Minutes of August 26, 2008 **with** Councilmembers Moylan and Whittum to give written input to the city clerk on the items they feel were omitted and if found accurate, include those comments in the minutes as approved.

City Clerk Gail Borkowski verified with Councilmember Howe that the minutes will not

return to Council for additional approval.

Vice Mayor Hamilton requested that any comments added should not be listed as verbatim. Councilmember Howe stated that was not the intent of his motion.

Councilmember Moylan and Councilmember Whittum stated they have already supplied their written requests for including additional items to the minutes.

VOTE: 7-0

1.B. Approval of Draft Minutes of September 16, 2008

1.C. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.D. RTC 08–281 List of Claims and Bills Approved for Payment by the City Manager – List No. 419 & 420

Staff Recommendation: Council reviews the attached lists of bills.

1.E. RTC 08–284 Transmittal of Performance Results Audit of FY 2006/2007 for Program 117 – City Streetlight System

Staff Recommendation: Council receives the audit report and concurs with management's acceptance of recommendations.

1.F. RTC 08–278 Acceptance of Donation from Kaiser Permanente for Funding of a Traffic Study and Approval of Budget Modification No. 10

Councilmember Swegles stated he thought this grant money was going to come in a lot earlier and questioned if the report will be finished by December 2008. Director of Public Works Marvin Rose confirmed that the report will be delayed in coming to Council; however, the study has commenced. Director Rose stated he will return to Council with the new date, but it will be sometime next year.

Councilmember Whittum inquired as to the terms of the agreement which were implied by receipt of the funds. Transportation and Traffic Manager Jack Witthaus explained that per the work plan, staff solicited quotations from traffic engineering firms to do the traffic study and upon receiving those quotes and based on a work scope prepared by staff, that information was then submitted to Kaiser. The solicitation included a scope of work for completing the traffic study and a cover letter indicating how the funds would be used.

Councilmember Whittum inquired as to the difference between the traffic study completed in April 2008, and what is currently being done. Manager Witthaus stated the study looked primarily at neighborhood issues in Sunnyvale and Santa Clara, and not Kaiser Hospital access issues. Manager Witthaus stated that staff will be able to use some of the data collected, but the study did not address the access issue.

Councilmember Whittum inquired if the traffic study will incorporate bicycle and pedestrian considerations. Manager Witthaus stated the intent of the study was to look at motor vehicle access to the facility.

Councilmember Whittum verified that staff will be looking at development that is reasonably foreseeable, which includes development that is entitled but not built, and development being considered. Staff will also consider entitlements that Kaiser has on their property, which they have not yet built.

Councilmember Howe verified that the scope of the study is what Council asked staff to do and that only the donation from Kaiser Permanente will be spent on this project. Additional funds from the City will not be used.

Mayor Spitaleri verified with Manager Witthaus that the funding source for the study is exclusively from the Kaiser donation.

Mayor Spitaleri verified with Director of Public Works Marvin Rose that the budget modification will be reimbursed by the donation from Kaiser.

Public comments opened at 7:36 p.m.

No speakers.

Public hearing closed at 7:36 p.m.

Councilmember Swegles left the dais.

MOTION: Vice Mayor Hamilton moved and Councilmember Howe seconded to approve Alternative 1:

- Council accepts the donation of \$46,530 from Kaiser Permanente,
- Council appropriates these funds to a new project for the traffic study of access alternatives to the Kaiser Santa Clara Medical facility, and
- Council approves Budget Modification No. 10

Mayor Spitaleri announced that Councilmember Swegles will be excused from this remainder of this meeting.

VOTE: 6-0 (Councilmember Swegles absent)

Contracts

1.G. RTC 08-289 Award of Contract for Design of Facility Improvements for the Removal of Sediment from the Oxidation Ponds at the Water Pollution Plan (F0808-10)

Staff Recommendation:

- Council approves a consultant services agreement, in substantially the same form as the attached draft and in the amount of \$100,990, to Lee & Ro, Inc. to provide infrastructure improvement design services as required at the Water Pollution Control Plant for the Pond Sediment Removal Project, and
- Council approves a design contingency in the amount of \$15,000

1.H. RTC 08-290 Award of Bid No. F807-07 for Solar Powered Radar Speed Signs

Staff Recommendation: Council awards a contract in substantially the same form as the attached draft Purchase Order and in the amount of \$107,979, to FORTEL Traffic, Inc. to provide fifteen solar powered, pole mounted radar speed signs.

Personnel

1.I. RTC 08-279 Renewal of Contracts for Dental Insurance for Calendar Year 2008 and Vision Insurance for Calendar Years 2009/2010

Staff Recommendation: Council authorizes the director of human resources to enter into a contract with Delta Dental for the period January 1, 2009 through December 31, 2009, and authorizes the director of human resources to enter into a contract with Vision Service Plan for the period January 1, 2009 through December 31, 2010.

1.J. RTC 08-280 Amendment to the Classification Plan and Salary Resolution to Add the Newly-Established Classifications of the Water Distribution Series, including: Public Works Maintenance Worker I/II; Water Distribution Worker: Senior Water Distribution Worker; Water Distribution Crew Leader; Senior Water Distribution Crew Leader; Water Operations Manager; and Approval of Budget Modification No. 11

Staff Recommendation: Council adopts resolution to amend the City's Classification Plan and Salary Resolution to add the newly-established classifications of the Water Distribution series that will become effective October 5, 2008 and approve Budget Modification No. 11.

Other Items

1.K. RTC 08-276 Authorization to Award Contract in the Amount of \$276,000 to Vietnam Veterans of California for Homeless Veterans Reintegration Program

Staff Recommendation: Council, on behalf of NOVA seven-city consortium, authorizes the award of a contract in the amount of \$276,000 to Vietnam Veterans of California to provide services for the Homeless Veterans Reintegration Program.

1.L. RTC 08-277 City's 2008 Conflict of Interest Code Biennial Notice

Staff Recommendation: Council (as the City's code reviewing body) reviews and files the Conflict of Interest Code Biennial Notice.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

Councilmember Howe requested items 6, 7 and 8 be taken together and that they be taken first. Councilmember Whittum stated he supports that request.

Mayor Spitaleri agreed and requested one staff report be done for all three items.

6. RTC 08-274 Award of Taxicab Franchise to A Orange Cab, Inc.

Public Safety Captain Marty Wright presented the staff reports.

Public hearing opened at (time not recorded).

No speakers.

Public hearing closed at (time not recorded).

City Clerk Gail Borkowski read the titles of the ordinances for items 6, 7, 8.

MOTION: Councilmember Howe moved and Councilmember Lee seconded to approve Alternative 1: Council introduces and adopts ordinance awarding a non-exclusive franchise for taxicab service to A Orange Cab, Inc. for a period December 29, 2008 through December 28, 2010 per applicant's request, and authorizes the city manager to execute necessary documents of agreement.

VOTE: 6-0 (Councilmember Swegles absent)

7. RTC 08-275 Award of Taxicab Franchise to Yellow Checker Cab Company, Inc. dba Checker Cab of Silicon Valley

MOTION: Councilmember Howe moved and Councilmember Lee seconded to approve Alternative 1: Council introduces and adopts ordinance awarding a non-exclusive franchise for taxicab service to Checker Cab of Silicon Valley for the period of October 19, 2008 through October 18, 2010 per applicant's request, and authorizes the city manager to execute necessary documents of agreement.

VOTE: 6-0 (Councilmember Swegles absent)

8. RTC 08-273 Award of Taxicab Franchise to Yellow Cab Company Peninsula, Inc.

MOTION: Councilmember Howe moved and Councilmember Lee seconded to approve Alternative 1: Council introduces and adopts ordinance awarding a non-exclusive franchise for taxicab service to Yellow Cab Company Peninsula, Inc. for the period September 28, 2008 through September 27, 2010 per applicant's request, and authorizes the city manager to execute necessary documents of agreement.

VOTE: 6-0 (Councilmember Swegles absent)

2. RTC 08-291 Appointment of City Manager and Approval of Employment Contract and Approval of Budget Modification No. 12

Director of Human Resources Erwin Young presented the staff report.

Public hearing opened at 7:45 p.m.

No speakers.

Public hearing closed at 7:45 p.m.

MOTION: Councilmember Howe moved and Councilmember Lee seconded to approve Alternative 1: Council adopts a resolution approving the appointment of Gary Luebbers to the position of city manager, approves the contract as attached (Exhibit 1 to the Resolution), and approves Budget Modification No. 12.

Councilmember Howe stated Council did an extensive search and did everything they could to bring forward a well-qualified new city manager to the City. Councilmember Howe stated the entire Council worked together as a team to come forward with this recommendation.

Councilmember Howe and Vice Mayor Hamilton thanked staff and the community panels for their assistance in this process.

Councilmember Whittum stated he seconds the comments made by Councilmember Howe and Vice Mayor Hamilton. Councilmember Whittum stated Council worked together and made the right choice.

Councilmember Lee stated Council went through a very comprehensive selection process for this position. Councilmember Lee explained that there were many qualified candidates and he congratulated his colleagues for working well together in identifying a new city manager for the City.

Councilmember Moylan stated that members of the public had a real and measurable effect on this process. Members of the public contributed to the phraseology of the recruitment brochures for the city manager position. Councilmember Moylan congratulated the mayor for adding interview panels of local business owners and community members. Councilmember Moylan explained that the candidate selected was listed on each one of the interview panel's short list of their top three candidates.

Councilmember Howe explained that Councilmember Swegles had a personal emergency that he had to attend to; however, he would have echoed the comments made tonight and is very much in favor of the new city manager.

Mayor Spitaleri stated he agrees with everything that has been said and he thanked his colleagues for allowing him to bring forward an inclusive process which included employees and community members in the selection process. Mayor Spitaleri thanked staff and his colleagues for their assistance in this process. Mayor Spitaleri stated that the process used for this recruitment was successful and suggested that it be used for future city manager recruitments.

VOTE: 6-0 (Councilmember Swegles absent)

3. **RTC 08–285 2007-0754 Amendments to Title 19 to Implement Policy
Amendments to Parking Standards and Requirements Adopted by
the City Council on February 26, 2008**

Planning Officer Trudi Ryan presented the staff report.

Councilmember Whittum verified with Planning Officer Ryan that per the direction of the Council last February, the Bicycle and Pedestrian Advisory Commission did not review this item.

Public hearing opened at 7:58 p.m.

Kevin Jackson, member of the Bicycle and Pedestrian Advisory Commission, speaking on his own behalf, stated he strongly supports section 19.46.005; however, it needs some additional clarification. Jackson urged Council to support Alternative 2 with modifications,

Councilmember Moylan stated the modifications that Jackson is requesting are not clear; and questioned whether Jackson was asking Council to add the newly adopted street space allocation policy which identifies that the higher priority for streets is for mobility purposes. Jackson responded that the word "priority" was removed from the policy. Jackson explained that a lot of verbiage can be taken from the street space allocation policy; however, these are two different issues. The street space policy is for when streets are reconfigured and this item involves new development.

Councilmember Moylan requested Jackson state what type of language he is suggesting as a modification. Jackson stated he is not a lawyer and would not want to state the exact language.

Councilmember Whittum asked Jackson if there would be any value in allowing the Bicycle and Pedestrian Advisory Commission to have input on this item and Jackson responded that he is not comfortable with spelling out the actual legal language. Jackson stated that the present language requires that parking has to be provided and it is a faulty assumption that if parking is provided, people will use it. The policy needs to state the amount of parking that will be allowed for the project, and to keep parking off the streets.

Public hearing closed at 8:06 p.m.

Vice Mayor Hamilton questioned whether all new projects have to be 100 percent self park. Planning Officer Ryan explained that the existing regulations require a minimum amount of parking for a site and that Council added language to further strengthen that intent by stating that the purpose of the chapter is to ensure that a property provide sufficient parking for onsite parking demand. It is staff's opinion that the added sentence strengthens the policy.

MOTION: Councilmember Moylan moved and Councilmember Howe seconded to approve Alternative 1: Council adopts the ordinance language as amended by Planning Commission (Attachment B);

with modify the ordinance, 19.46.005 which currently reads as: The purpose of this chapter is to ensure that all uses of the property provide sufficient on-site parking to handle demand.
add: No property is entitled to presume the availability of street parking.

Councilmember Whittum questioned staff as to the impact that Councilmember Moylan's added sentence would have for existing single family residential neighborhoods. Planning Officer Ryan explained that the majority of single family neighborhoods located on public streets rely on street parking for guest parking; however, there are areas that do not have any street parking availability.

Councilmember Whittum discussed downtown parking with Planning Officer Ryan. Councilmember Whittum verified with Planning Officer Ryan that the Planning Commission does not have any jurisdiction over a public street. Manager Witthaus stated the addition of the statement offered by Councilmember Moylan would not change practice or policy. Manager Witthaus stated that the suggested statement puts into writing what is current practice. Currently, when reviewing new developments, staff reminds developers that public street parking is not permanent, because for any number of reasons the City may need to change the parking.

Councilmember Whittum verified that Manager Witthaus is in favor of the added language as proposed by Councilmember Moylan.

Vice Mayor Hamilton verified with Planning Officer Ryan that Section 6 on page 3, 19.46.005, Purpose, pertains to the entire City, not just commercial zones.

City Manager Amy Chan stated that the added statement proposed by Councilmember Moylan would formalize Council's intent.

VOTE: 6-0 (Councilmember Swegles absent)

City Clerk Gail Borkowski read the title of the ordinance into the record.

4. RTC 08-287 2007-0800 Amendments to Title 19 and Title 9 to Implement the City-wide Solar Energy Plan Policies. Adopted by the City Council on December 11, 2007

Planning Officer Trudi Ryan presented the staff report.

Councilmember Howe inquired whether the solar policies, which include common interest subdivisions or homeowner associations, would have any say regarding the permit or approval process for the solar system.

Planning Officer Ryan stated language is included in the policy that when the solar facility is located on commonly owned property, the association or group will need to give approval and support of the installation in order for the project to move forward. An individual condominium owner could independently contract with a solar provider, but that provider would need to provide evidence that the homeowners association has authorized an installation.

Councilmember Howe questioned whether a solar provider would need to obtain authorization for a townhome where the homeowners association has little or no responsibility for maintaining the home. Planning Officer Ryan stated they would not be required based on City regulations, but there may be some regulations in their private agreements.

Councilmember Howe verified with Planning Officer Ryan that in almost all situations, a contractor can pull a building permit without providing evidence that they received either the owner or homeowner's association's approval; whereas, this ordinance for solar energy systems would require a letter of authorization from the homeowners association. Councilmember Howe verified that if an association or entity is not responsible for maintaining the roof, then a letter of authorization would not be required.

Councilmember Whittum discussed with Planning Officer Ryan the specifics of what is allowed for solar installations and the incentives for installation.

Councilmember Whittum questioned how this ordinance would qualify for a California Environmental Quality Act (CEQA) exemption. Councilmember Whittum asked how staff concluded that the exemption, which states that this is an action by regulatory agency for the protection of natural resources, is appropriate when installation of solar energy systems will most likely result in fewer trees, removal of some trees, and the installation of equipment which starts out with a negative net environmental impact. Planning Officer Ryan stated that staff views this as a net positive; however, Council can return this to staff with a request for further environmental review.

Councilmember Whittum inquired whether staff is aware of the impact this will have on the City's tree population. Planning Officer Ryan stated that state regulations give preference to vegetation; whereas, prior regulations gave preference to solar installations.

Public hearing opened at 8:33 p.m.

No speakers.

Public hearing closed at 8:33 p.m.

MOTION: Councilmember Lee moved and Councilmember Howe seconded to approve Alternative 1: Council repeals Sunnyvale Municipal Code 19.56.030 and adopts ordinance language (Attachment B) as amended by Planning Commission.

Councilmember Lee spoke of the importance of promoting solar energy.

Councilmember Moylan noted that he appreciates staff's attempts to include the Planning Commission recommendations within the staff reports, which seems to be happening more often than in the past.

City Clerk Borkowski read the title of the ordinance into the record.

VOTE: 5-1 (Councilmember Whittum dissented and Councilmember Swegles absent)

5. RTC 08-286 2008-0376 Amendments to Title 19 to Clarify Requirements for Bounce Houses. Adopted by the City Council on April 29, 2008

Planning Officer Trudi Ryan presented the staff report.

Public hearing opened at 8:38 p.m.

No speakers.

Public hearing closed at 8:38 p.m.

MOTION: Councilmember Lee moved and Councilmember Howe seconded to approve Alternative 1: Council adopts the ordinance language as amended by Planning Commission (Attachment B).

City Clerk Borkowski read the title of the ordinance into the record.

VOTE: 6-0 (Councilmember Swegles absent)

9. RTC 08-292 Positions on State and Local Ballot Measures for November 2008 Election

Intergovernmental Relations Officer Yvette Agredano presented the staff report.

Councilmember Moylan inquired why the measure regarding farm animals is City business since there are not any farms in Sunnyvale.

Director of Public Safety Don Johnson explained that this item coincides with prior Council policy on animals. Director Johnson stated that there are times that farm animals could be transported through town. Councilmember Moylan stated this item involves keeping animals in pens and Director Johnson agreed but explained that if this proposition were to pass, it would give the City one more tool outside of the current municipal code.

Councilmember Moylan verified with Manager Witthaus that the proposition regarding the high-speed rail could potentially pay for grade separations; however, the proposed language is somewhat vague.

Councilmember Moylan stated Proposition 8 regarding a limit on marriage should be City business. Officer Agredano explained that the City does not have a policy on same-sex marriage and therefore staff did not recommend taking any position on this proposition. Councilmember Moylan stated he thought the rationale staff listed for this item was that it was not city business. Officer Agredano stated since the City does not perform marriages there would not be an impact to the City if this measure were to be successful. Officer Agredano explained that staff determines whether the City should take a position on a proposition based on whether the proposition would affect City services or whether a City policy exists.

Councilmember Whittum stated Proposition 5 does not decriminalize marijuana use; therefore, he is not convinced that the City should oppose it because it does not go against City policy which opposes decriminalization of all controlled substances. Director of Public Safety Johnson explained that the proposition reduces possession of marijuana to an infraction for amounts not greater than 1 ounce. The proposition takes away the leverage for any criminal court action. Councilmember Whittum stated there are still measures that are criminal with jail time based on the amount of drug that is found in possession.

Councilmember Whittum stated that Measure B, regarding the extension of Bart to the South Bay, will affect Sunnyvale's corridors. Councilmember Whittum stated he does not agree with the City taking a neutral position, when indirectly this measure will affect the City's corridors. Councilmember Whittum inquired why staff is recommending a neutral position. Manager Witthaus explained that generally when new funding is identified it causes money to shift around; however, these funds would be specifically identified for Bart operations.

Councilmember Whittum disclosed he lives within 500 feet of a corridor and requested the city attorney to direct him if he should not discuss or vote on the measure.

Councilmember Whittum verified with Manager Witthaus that if the Bart to South Bay project were to be approved, independent of this measure, but tied to the overall funding of Bart, it could delay the Caltrain electrification program because the Santa Clara Valley Transportation Authority (VTA) long term capital improvement plan is not totally funded. Councilmember Whittum stated the City has a policy that specifically supports the Caltrain electrification program.

Councilmember Whittum verified with Manager Witthaus that the ballot measure regarding adoption of the Valley Transportation Plan 2005 is about planning and creating a Valley Transportation Plan (VTP 2035). Councilmember Whittum and Manager Witthaus continued to discuss the Valley Transportation Plans.

City Attorney David Kahn stated Councilmember Whittum may participate in discussions and voting on the ballot measures as they affect the general public, not specifically Councilmember Whittum.

Public hearing opened at 8:53 p.m.

No speakers.

Public hearing closed at 8:53 p.m.

Councilmember Lee requested that Council adopt these measures as done with the consent calendar where the group of measures will be voted on together and Council may pull any items from the group for separate voting. Mayor Spitaleri agreed.

Vice Mayor Hamilton pulled Measure B and Councilmember Moylan pulled Proposition 1A.

MOTION: Vice Mayor Hamilton moved and Councilmember Lee seconded to approve Alternative 1: Council adopts the following positions on the ballot measures with the exception of Proposition 1A and Measure B:

State Ballot Measures:

Proposition 2 - Treatment of Farm Animals: SUPPORT

Proposition 3 – Children’s Hospital Bond Act. Grant Program: SUPPORT

Proposition 5 – Nonviolent Offenders. Sentencing, Parole and Rehabilitation: OPPOSE

Proposition 6 – Criminal Penalties and Laws. Public Safety Funding: NEUTRAL

Local Ballot Measures:

A – Hospital Seismic Safety and Medical Facilities: SUPPORT

C – Adoption of the Valley Transportation Plan 2035: SUPPORT

Councilmember Whittum stated he is not in favor of the City taking a position on any of these measures. Councilmember Whittum stated he did not ask for the public to support him as a Councilmember so he could turn around and tell the community how to vote. Councilmember Whittum stated that if Councilmembers wish to advocate for items individually, that would be acceptable, but he does not agree with using City resources to take positions on ballot measures.

Vice Mayor Hamilton stated she disagrees that Council is telling the community how to vote because everyone has a right to choose the issues they wish to support. Vice Mayor

Hamilton stated as public officials, Councilmembers are letting the community know whether the ballot measures will offer any benefit to the City or not.

Councilmember Whittum restated that a local voter does not need to be told how to vote; however, if Council would like to advocate on their time, and not on City time, he would support that.

VOTE: 4-2 (Councilmembers Whittum and Howe dissented, Councilmember Swegles absent)

State Ballot Measure:

Proposition 1A – Safe, Reliable High-Speed Passenger Train Bond Act: NEUTRAL

Councilmember Moylan stated he pulled Proposition 1A in order to support this measure.

MOTION: Councilmember Moylan moved and Councilmember Lee seconded to take a SUPPORT position on Proposition 1A.

Councilmember Moylan stated he has a more expanded view of City business and it involves how much a proposition may affect the citizens in this community. Councilmember Moylan stated the City should support Proposition 1A because the potential it offers for possible funding of grade separations would be a huge benefit for the City.

Councilmember Lee spoke about the benefits of high-speed rail.

Mayor Spitaleri inquired as to why staff feels that Council should be neutral on this issue. Manager Witthaus stated that City policy supports improving regional transit and state efforts to reduce single occupancy automobile use, which would be supportive of high-speed rail. Legislative policy takes a look at how the system is to be funded and advocates for a system that will pay for itself. Manager Witthaus stated there are questions as to whether the system would be able to cover the operating costs.

VOTE: 3-2 (Councilmember Howe and Mayor Spitaleri dissented, Councilmember Whittum abstained, and Councilmember Swegles absent)

Local Ballot Measures:

B – Bart to South Bay: NEUTRAL

Vice Mayor Hamilton stated she pulled Measure B on Councilmember Swegles behalf who recommended changing this to a SUPPORT position. Vice Mayor Hamilton stated at this point she has not decided if she agrees with that change.

Councilmember Moylan stated that the intended terminus for Bart would be in Santa Clara. Councilmember Moylan explained that this measure supports Santa Clara County paying for the operating costs for the Bart system if the federal government funds this project. This item is only about how the operating costs would be funded which is not at the discretion of the Valley Transportation Authority Board (VTA), so the governance issue would not be linked to this item. Councilmember Moylan stated he is a little conflicted on this item and that he could either support it or remain neutral at this point.

Public hearing opened 9:04 p.m.

No speakers.

Public hearing closed at 9:04 p.m.

MOTION: Councilmember Whittum moved and Councilmember Howe seconded that Council not take any position on Measure B.

Vice Mayor Hamilton inquired if the motion was for a NEUTRAL POSITION or NO POSITION on this item. Councilmember Whittum stated his motion was to take NO POSITION on this item. Vice Mayor Hamilton explained that a NO POSITION is for items that are not considered to be City business.

VOTE: 4-2 (Mayor Spitaleri and Vice Mayor Hamilton dissented and Councilmember Swegles absent)

State Ballot Measures

Proposition 11 – Redistricting: Not City business

Councilmember Moylan moved to take a support position on Proposition 11, redistricting. Councilmember Moylan stated this item absolutely affects Sunnyvale as the City has been divided into pieces.

Councilmember Moylan asked for a second. Vice Mayor Hamilton stated she would second the motion.

MOTION: Councilmember Moylan moved and Vice Mayor Hamilton seconded to take a SUPPORT position for Proposition 11.

Councilmember Moylan stated he would like Sunnyvale to be more contiguous during a future redistricting and have the level of influence that the population entitles it to have.

Public hearing opened at 9:07 p.m.

No speakers.

Public hearing closed at 9:07 p.m.

VOTE: 3-3 (Mayor Spitaleri and Councilmembers Howe and Whittum dissented and Councilmember Swegles absent)
MOTION FAILS.

State Ballot Measures

Proposition 8 – Limit on Marriage: Not City business

MOTION: Councilmember Moylan moved and Vice Mayor Hamilton seconded to take an OPPOSE position on Proposition 8.

Councilmember Moylan stated this item does affect many people in the City. Councilmember Moylan stated he would prefer government not be involved with the marriage issue at all, but since it is, the ability to marry should be equal for everyone.

Public hearing opened at 9:08 p.m.

No speakers.

Public hearing closed at 9:08 p.m.

VOTE: 3-2 (Councilmembers Howe and Whittum dissented, Mayor Spitaleri abstained and Councilmember Swegles absent)

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe stated a member of the public requested a copy of a staff report that went to the Housing and Human Services Commission and his request was denied. Councilmember Howe inquired if the staff report is a public document. Director of Community Development Hanson Hom explained that any document that goes to the Housing and Human Services Commission would be a public document. Councilmember Howe stated the report talked about percentage of Below Market Rate (BMR) and housing issues recently. Should that report exist, Councilmember Howe stated he would like to obtain a copy of that report. Director Hom stated staff will provide a copy of the background report on the housing strategy to Councilmember Howe. Director Hom explained that what went before the Housing and Human Services Commission was the staff report outlining the general recommendations under the housing strategy; however, the actual strategy itself was not in final form for public release. Councilmember Howe requested a copy of the entire document that went before the Housing and Human Services Commission.

Councilmember Whittum stated a member of the public who spoke at a Council meeting expressed to him that they were concerned over safety issues because their name had been listed in the minutes. Councilmember Whittum requested that staff clarify whether a speaker who turns in a speaker card with only an initial, could be listed as such in the minutes or do the minutes need to also list their last name. City Attorney Kahn stated he will check into that and return to Council with a response.

Councilmember Whittum stated at the Planning Commission hearing on the Mary Avenue Environmental Impact Report (EIR), the assistant city attorney described a memo that a planning commissioner asked about; however, that memo was not provided to the commissioners. Councilmember Whittum requested that Council receive a copy of that memo.

Councilmember Whittum stated a citizen informed him that she needed help removing a shopping cart full of trash at Fair Oaks and the 101 freeway. Councilmember Whittum inquired how citizens can receive assistance when they need help in removing trash. City Manager Amy Chan stated that Councilmember Whittum previously emailed this question to staff and she did respond to his question. City Manager Chan stated she will resend a copy of her email response to the entire Council. City Manager Chan explained that the best way to assist with the trash issues is for individuals to sign up on a volunteer basis and to list a contact number for assistance.

Councilmember Whittum responded that if people are going to pick up trash, certainly, they should go through the volunteer program because there are safety issues involved. Councilmember Whittum stated his concern was over the ability to have the shopping cart full of trash picked up and suggested that the City produce an informational sheet regarding the volunteer training for trash pick up services and also information about things that can't be moved, such as a shopping carts.

Councilmember Lee announced that on November 4, 2008, the Presidential General Election will be held.

Vice Mayor Hamilton stated at the August 27, 2008 Housing and Human Services Commission meeting, the commission voted to remove a speakers name from the minutes. Vice Mayor Hamilton requested the city attorney look into this because previously commission members have been asked not to be listed in the minutes. Vice Mayor Hamilton requested that the city attorney include this issue when he responds about speakers names being listed in the minutes at Council meetings.

Mayor Spitaleri announced the upcoming Sunnyvale Pet Parade.

Councilmember Lee announced that election ballots may be dropped off at any polling place, or at City Hall in the Finance Department.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of September 8, 2008
- RTC 08-282 Distribution of FY 2004/05 and 2006/07 Quality of Life Index Reports – Information Only
- Approved Minutes for Housing & Human Services Commission Meeting of August 27, 2008
- Draft Minutes of the Parks & Recreation Commission Meeting of September 10, 2008

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting to the Redevelopment Agency at 9:18 p.m.

City Clerk

Date